

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S REPLY
BRIEF**

75-7128

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

JUAN SANCHEZ LUGO,

Plaintiff-Appellant,

- against -

THE EMPLOYEES RETIREMENT FUND OF THE
ILLUMINATION PRODUCTS INDUSTRY, CHARLES
F. ROTH, individually and in his capacity
as Assistant Executive Secretary of the
Employees Retirement Fund of the
Illumination Products Industry, and
KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD
GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL, II,
EDWARD R. MURPHY, JERRY SCHNEIT, ROWLAND
J. SIMES, MEYER TEITELBAUM, WALTER WEISS,
ALBERT BAUER, SOL BERMAN, JOSEPH BONO,
STEPHEN KANYOOSKY, KAREL METKA, JOHN
SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE,
HARRY VAN ARSDALE, JR., and SINTOS
ZAPPATA, as trustees of the Employees
Retirement Fund of the Illumination
Products Industry,

Defendants-Appellees.

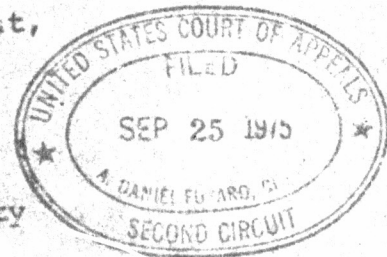
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REPLY TO APPELLANT'S REPLY BRIEF

MENAGH, TRAINOR & ROTHFELD
Attorneys for Defendants Appellees
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

Of Counsel:

Norman Rothfeld



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Plaintiff-Appellant,

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ZAPPATA, as trustees of the Employees
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Products Industry,

Docket No.
75-7128

Defendants-Appellees.

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MENAGH, TRAINOR & ROTHFELD
Attorneys for Defendants-Appellees
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

Of Counsel:

Norman Rothfeld

TABLE OF CONTENTS

	<u>Page</u>
1. The Federal Courts Lack Subject Matter Jurisdiction.....	1-2
2. The Plaintiff Was Not Deprived Of Due Process.....	2
3. The Plaintiff Lacks Standing To Sue For Standard Pension Benefits.....	2-3

REPLY TO APPELLANT'S REPLY BRIEF

ARGUMENT

1. The Federal Courts Lack Subject Matter Jurisdiction.

In support of his assertion that the Federal Courts possess jurisdiction herein, the plaintiff in his Reply Brief (pp. 8-9) cites a dictum in the United States Supreme Court's Decision in Arroyo v. United States, 359 U.S. 419 (1959), which makes a general reference to Federal jurisdiction of compliance with standards in the administration of welfare funds. As this Court noted in Haley v. Palatnik, 509 F. 2d 1038, decided on January 24, 1975, Arroyo was a holding that embezzlement by a union official of funds paid to a trust fund was not a violation of §302 of the Taft-Hartley Act absent impropriety by the contributing employer.

This Court in Haley, which involved an improper diversion of trust funds, stated:

"We agree with the district court's conclusion that conduct constituting no more than a simple breach of fiduciary duty to a §302(c) trust does not come within the prohibition of the Act per se. (citing cases)

But the conduct here, in our view, amounted to a 'violation of the act.' The Act, which was principally intended to protect the collective bargaining process by eliminating the corruptive influence of side payments by employers to union representatives, 2 U.S. Code Cong. & Ad. News, 86th Cong., 1st Sess. at 2326-27 (1959), prohibits anyone 'who acts in the interest of an employer to . . . agree to pay, lend, or deliver any money or other

thing of value (1) to any representative of any of his employees . . . or (4) to any officer or employee of a labor organization . . . with intent to influence him in respect to any of his actions, decisions, or duties..."

2. The Plaintiff Was Not Deprived Of Due Process.

In support of his assertion that the Fund's physicians should be subject to cross-examination, the plaintiff controverts (Reply Brief, p. 11) our statement that he "was carefully examined by a panel of the Fund's physicians" and cites that the Record "is devoid of any testimony covering any aspect of this examination". We respectfully refer this Court to Exhibits J and K, which set forth the procedures and findings of six of the Fund's physicians. We further note the plaintiff's refusal to submit to examination by a physician to be selected by Judge Bartels.

3. The Plaintiff Lacks Standing To Sue For Standard Pension Benefits.

The plaintiff in his Reply Brief (pp. 15-16) asserts that the District Court's refusal to consider the plaintiff's claim of future entitlement to a standard pension because "there may not be any controversy" (A-249) since "he may die before he reaches that stage" (A-241) constituted a ruling based upon lack of ripeness rather than lack of standing to sue. We respectfully urge that standing and ripeness both are lacking.

The plaintiff urges that "defendants' denial of a pension to plaintiff at age 60 is a "certainty". The plaintiff thus assumes as a certainty both that he will live until age 60 and that he will persist in refusing to return to work in defendants' industry. This Court will not, of course, concur in this assumption.

Dated: New York, New York
August 27, 1975

Respectfully submitted,

MENAGH, TRAINOR & ROTHFELD
Attorneys for Defendants
Office & P. O. Address
130 East 40th Street
New York, New York 10016
(212) 532-3850

Of Counsel:

Norman Rothfeld

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9/2/75 2:45 P.M.

David S. [Signature]
Attorney for [Signature]